

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 26, 2003 LB 111

that we got into at one point in time in this Legislature. And when we revised the criminal law, we didn't...we took away power from the prosecutors and the judges because we thought this Legislature should give proportionality to the law and to distinguish these situations, and that it ought not to be up to a judge to decide whether somebody gets five years or five days by making a penalty so harsh that, essentially, you're just throwing into the hands of the judges this vast discretion, instead of being more thoughtful and more careful at the legislative level in terms of what we allowed. Now from a prosecutor's perspective, of course, to exaggerate greatly, they would like to have everything be a Class I capital offense felony because then they have the leverage to do whatever they please. That's the maximum leverage. But that is a thing that we have found over time we need to bring under some kind of control by designating penalties and distinguishing situations. So I would ask Senator Mossey to think about whether that word should be person, or should it be adults that we're trying to direct this towards? Or are we willing to risk catching people in this network that we don't really intend to capture? Secondly, the law here says it's a minor that has to be one of the participants or portrayed observers. Now this is different from the other law that applies to distributors and manufacturers and people who create child pornography because that law with respect to them is defined as a child. That is it is a child that cannot be...

SPEAKER BROMM: One minute.

SENATOR BEUTLER: ...that cannot be one of the participants or portrayed observers. And a child is something...is a person that's somewhat younger in age than what we define a minor to be. So this law is out of sync, in my opinion, in three different ways. First of all, proportionality has not been maintained. Secondly, it gives too much prosecutorial discretion by using the word "person" instead of "adult." And, third, it makes the law even more out of sync because it uses the word "child" instead of "minor." We could do a much better job here in three different ways if we'd spend just a little more time and corrected these deficiencies, I believe. And with that, thank you, Mr. Speaker.